IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 395 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE P.B.MAJMUDAR

==========

1. Whether Reporters of Local Papers may be allowed to see the judgment? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

VRAJLAL DWARKADAS

Versus

GIRDHARLAL KALIDAS DHRUVE

Appearance: MR HASIT H JOSHI for the Petitioner.
Respondent, PARTY-IN-PERSON.

CORAM : HON'BLE MR.JUSTICE P.B.MAJMUDAR

Date of decision: 25/02/2004

ORAL JUDGEMENT

1. Rule. The respondent-party-in-person waives service of rule. With the consent of the parties, the matter is taken up for final hearing today.

2. The petitioner is the original defendant, against whom a suit for eviction was filed by the respondent-original plaintiff, being Regular Civil Suit

No.56 of 1983. The respondent-original plaintiff is the owner of a house situated in Khambhalia Town. The defendant was given the aforesaid premises as a tenant at a monthly rent of Rs.150/-. The aforesaid suit was filed for getting a decree for possession on the ground that the defendant had not paid the rent for more than six months and on the ground of arrears of rent, he is required to be evicted. The other ground pleaded in the suit is regarding bona fide requirement of the plaintiff. The decree for eviction is also sought for on the ground that the defendant, after obtaining the possession of the rented premises, has acquired alternative accommodation, which is a suitable alternative accommodation, and, on the aforesaid ground of acquisition of alternative accommodation also, the decree for possession is sought.

3. The trial court, after framing necessary issues and after recording the evidence of the parties, ultimately, came to the conclusion that the plaintiff has failed to prove the case about non-payment of rent, as well as he has failed to prove his case regarding bona fide requirement of the house. Regarding acquisition of alternative accommodation, the trial court found that it cannot be said that, on the date of filing of the suit, the defendant acquired alternative accommodation. The trial court also observed that, looking to the size of the family of the defendant, it cannot be said that the alternative accommodation is adequate for accommodating the defendant's family. The trial court, ultimately, dismissed the said suit.

4. Being aggrieved by the aforesaid decree of the trial court, the present respondent herein, i.e. the original plaintiff of the suit, preferred an appeal, being Regular Civil Appeal No.36 of 1991, before the District Court at Jamnagar. The said appeal was heard by the learned Joint District Judge, Fast Track Court No.2, Jamnagar. The learned appellate Judge, vide his judgment and order dated 31st July, 2003, allowed the said appeal and, ultimately, decreed the suit of the plaintiff for possession. The appellate court came to the conclusion that the defendant is required to be evicted on the ground that he has acquired alternative accommodation and, therefore, a decree under Section 13(1)(l) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 ("The Rent Act", for short) is passed by the appellate court. The defendant-tenant has, ultimately, approached this Court by way of this revision application, challenging the aforesaid order of the appellate court.

5. At the time of hearing of this revision, copy of the evidence, oral as well as documentary, is made available by the petitioner as well as the respondent. The respondent is appearing as party-in-person.

6. Mr.Joshi for the petitioner-tenant vehemently submitted that so far as acquisition of alternative premises is concerned, the same is purchased by the wife of the tenant and, therefore, it cannot be said that the acquisition of alternative accommodation by the wife is an acquisition of the alternative premises by the petitioner-tenant himself. It is submitted by Mr.Joshi that by sale deed, Exhibit 38, the alternative premises is purchased by the wife and that the tenant was not even aware that such property is purchased by his wife. Mr.Joshi also further submitted that after such purchase, even though the wife is residing in the house, which is purchased by her, yet, the petitioner-tenant continued to occupy the rented premises with the other family members. Mr.Joshi also further submitted that the wife had purchased the aforesaid house from her own income, by selling ornaments, which she had received from her father and, therefore, it is her own independent house and the present petitioner-tenant has no control in any manner over the said house and, therefore, no decree for possession can be passed under Section 13(1)(l) of the Rent Act.

In order to substantiate his say, Mr.Joshi has relied upon certain judgments, to which I shall refer later on.

7. Since the decree for possession is passed only on the aforesaid ground of Section 13(1)(l) of the Rent Act, the only question which requires consideration of this Court in this CRA is whether the appellate court has committed any error of law in reaching the conclusion that the defendant-tenant has acquired alternative accommodation, as contemplated under Section 13(1)(l) of the Rent Act.

8. At this stage, reference is required to be made to the aforesaid section, being Section 13(1)(l) of the Rent Act, which reads as under :-

" ... ...

13. (1) Notwithstanding anything contained in this Act but subject to the provisions of section 15, a landlord shall be entitled to recover possession of any premises if the Court is

satisfied--

xxx xxx xxx

(l) that the tenant after the coming into operation of this Act has built, acquired vacant possession of or has been allotted a suitable residence.

... ..."

9. The petitioner-tenant has stated in his evidence at Exhibit 84 that he is residing in the suit premises with some of his family members. In his cross-examination, he has stated that his wife has purchased a house in her own name in Mochi Sal area of Khambhalia Town. In his evidence, he has stated that the sale deed of the said house is in favour of his wife. He has also further stated in the cross-examination that his wife has purchased the said building from one Karubhai Gadkawala. He has further stated that, at the relevant time, he was not aware that his wife has purchased the said house and his wife has asked nothing from him as he was sick. He has further stated in the cross-examination that the house, which is purchased by his wife, consists of three rooms, latrine, bathroom, and a small open place. He has also further stated in the evidence that he has never asked his wife anything in connection with the aforesaid premises, which is purchased by his wife. In his evidence, he has further stated that the said house was purchased by his wife from her own income by selling some ornaments, which she had received from her parents. He has further stated that he is not going to examine his wife as a witness. He has denied the suggestion that he is not using the suit premises or paying the electricity charges of the suit premises.

10. In this connection, reference is required to be made to the sale deed, by which the wife of the petitioner has purchased the property in her name, and in the top portion of the aforesaid document at Exhibit 38, it is clearly mentioned that the stamp paper is purchased by the petitioner on behalf of his wife. The oral evidence of the defendant-tenant is, therefore, falsified by the aforesaid endorsement in the Sale Deed. It is required to be noted that the relationship of the petitioner with his wife is absolutely cordial and both the husband and wife are staying together. It is required to be noted that, as per the evidence on record, it is clear that the wife of the petitioner is not having

any other income in any manner and from the evidence on record, it is clear that the petitioner has purchased the house, in the name of his wife, from his own income as the wife of the petitioner was not having any income worth the name, as, she is merely a housewife. In his evidence, he has clearly stated that he and his wife, both are staying together, though, of course, he has stated that they are staying in the rented house. In his evidence, he has clearly stated that his wife is not having any income worth the name.

So far as the version about purchase of the house by selling ornaments is concerned, it is required to be noted that the petitioner-original defendant has not even examined his wife in evidence nor has he produced any evidence, worth the name, to justify the said say that any such transaction of sale of ornaments had ever taken place. The petitioner was doing business and as pointed out by Mr.Joshi for the petitioner, he was having a grocery shop.

Under the above circumstances, the appellate court has found that the defendant-tenant has not produced any evidence nor has he examined his wife to substantiate the say that the house in question is purchased by the wife of the tenant by selling her ornaments and that no cogent evidence is forthcoming in this connection. Considering the aforesaid evidence on record, there is nothing on record to show that the amount of such sale transaction was paid by the wife. As such, considering the evidence on record, in my view, it is clear that it is really the petitioner, who has purchased the said house, in the name of his wife. Apart from the aforesaid aspect, it is clear that both the defendant and his wife are residing together. Apart from that, there is also evidence to the effect that even so far as the rented premises is concerned, it was, as such, not used for a considerable period and as per the documentary evidence at Exhibit 52, for a considerable period, 'nil' electricity consumption is shown so far as the rented premises is concerned. The aforesaid document at Exhibit 52 is already placed on record and it is exhibited and it is produced by the Officer of the Gujarat Electricity Board. It is also not in dispute that the present rented premises consists of only one room. As against that, the house, which is purchased by the tenant, in the name of his wife, consists of more than three rooms and it can be said to be sufficient alternative accommodation for accommodating the defendant and his family members.

11. It has been pointed out by the respondent, party-in-person that over and above the house, which is purchased by the petitioner in the name of his wife, other two houses are also purchased by the defendant. However, in this connection, there is no cogent evidence on record. So, that part of the submission cannot be taken into account for deciding this revision application. However, considering the evidence on record, both documentary and oral, it is clear that the petitioner's wife has not purchased the house in question from her own resources and it seems to have been purchased by the husband in the name of his wife. Not only that, the defendant himself has purchased the stamp paper, as indicated in the earlier part of this order. In spite of this, the defendant has stated, in his evidence, that, at the relevant time, he was not aware that his wife has purchased the said house nor has his wife informed him as to how the sale consideration was paid by her. Apart from the aforesaid aspect, it is clearly borne out from the evidence that the wife of the defendant-tenant had no income of her own and the mere statement by the tenant, that by selling some ornaments, she has purchased the new house, is not sufficient to arrive at a conclusion that she has purchased the house from her own income, especially when the tenant himself has stated, in his evidence, that the wife is having no income worth the name. The defendant has also not examined his wife in the evidence nor any evidence worth the name is produced to substantiate the say that the house in question is purchased by the wife from her own income. Simply because the payment is made by the wife, itself is not sufficient for coming to the conclusion that the house was purchased by the wife from her own income, and the petitioner, who is doing business, cannot be said to be ignorant as to in which manner the aforesaid amount was paid and the particulars about sale of so-called ornaments by the wife. It is also required to be noted that even as per Exhibit 52, it is found that even the rented house was not used for a considerable time and no electricity consumption was recorded. Under these circumstances, the appellate court has come to the conclusion that the petitioner-tenant, who is residing with his wife, is required to be evicted from the suit premises, on the ground of acquisition of alternative accommodation. The finding of fact arrived at by the appellate court, in my view, cannot be said to be erroneous in any manner. Though the appellate court has not specifically given its finding to the effect that the house in question is purchased by the tenant in the name of his wife from his income, reading the evidence on record, the aforesaid aspect is absolutely clear. Under

the circumstances, the order of the appellate court is not required to be interfered with by this Court in this revision application.

12. Mr.Joshi, for the petitioner-tenant, has, however, relied upon certain judgments in order to substantiate his contention that the acquisition of a house by the wife of the tenant cannot be said to be acquisition by the tenant himself.

Mr.Joshi firstly relied upon the decision of the Apex Court in Anandi D. Jadhav (dead) by L.Rs. v. Nirmala Ramchandra Kore and others, AIR 2000 SC 1386. In the aforesaid case, the mother was the tenant of the suit premises and her sons were residing with her in the rented premises. The relevant observations in the aforesaid judgment are in paragraphs 5 and 9, which read as under :-

" ... ...

5. A plain reading of the above provision shows that under clause (l) a landlord is entitled to recover possession of a premises from any tenant provided the Court is satisfied that after coming into operation of the Act, the tenant has built or has acquired vacant possession of or has been allotted a suitable residence. From the scheme of the provision it is discernible that it is only when the tenant gets a right to reside in a house other than the demised premises on the happening of any one of the three alternatives mentioned therein, namely, either by building or by acquiring vacant possession of or by allotment of a house, that the landlord can seek recovery of possession of the demised premises from the tenant.

xxx xxx xxx

9. Now the question arises what is the ambit of the term 'tenant' in Section 5(11) of the Act. Insofar as it is relevant for our purpose, it reads thus :

"5(11) "tenant" means any person by whom or on whose account rent is payable for any premises and includes--

(a) such sub-tenants and other persons as have derived title under a tenant before

the 1st day of February, 1973;

(aa) to (bba) **** **** **** ****

(c)(i) in relation to any premises let for residence, when the tenant dies, whether the death has occurred before or after the commencement of the Bombay Rents, Hotel and Lodging House Rates Control (Amendment) Act, 1978, any member of the tenant's family residing with the tenant at the time of his death, or, in the absence of such member, any heir of the deceased tenant, as may be decided in default of agreement by the Court;

(c)(ii) **** **** **** ****

The definition of 'tenant' is too exhaustive to include any member of the family residing with him. Such members of his family who were residing with the tenant at the time of his death, or in their absence any heir of the deceased tenant, as may be decided in default of agreement by the Court, would become tenant only on his death. It is true that the first respondent and her sons, respondents 2 and 3, were let into possession of the suit premises about 30 years before the institution of the suit but the first respondent alone was the tenant and respondents 2 and 3 were there as members of her family. They were, therefore, not tenants of the suit premises. The concurrent findings of the Courts below are that respondents 2 and 3 built the house for which the first respondent did not contribute any money; she did not shift her residence to the said house though she was visiting that house off and on. Inasmuch as the first respondent did not build any house and respondents 2 and 3 are not the tenants, the first of the three alternatives, referred to above, is not available to the appellant to seek eviction of the first respondent.

... ..."

Mr.Joshi then relied upon the Full Bench judgment of this Court in Heirs of Jayantilal Kanjibhai v. Rameshchandra Uttamram, 2000(3) GLH 76. In the aforesaid case, the wife of the tenant had purchased a bungalow in a cooperative society. The case of the landlord was that

the said house was purchased by the tenant in the name of his wife. On appreciation of evidence, in the said case, the Court found that the loan instalment was paid by the wife of the tenant. It was found that the wife was having her own independent income and moreover, the wife of the tenant had also paid the transfer fees to the Society. It was found that the wife of the defendant had regular income and was depositing her savings in the bank account. She was also paying income tax. Considering the evidence, it was found by the Court in that case that the bungalow in question was purchased by the wife from her own income and that it was not a benami transaction. She had already let out the said bungalow before even the suit for eviction was filed. Considering the various case law on the subject {including AIR 2000 SC 1386 (supra) }, and considering the evidence on record, the Full Bench of this Court came to the conclusion that there is no law, according to which the husband and wife could be deemed to be one person. If the tenant has no legal right in the property acquired by the other spouse, then, his need for old tenanted residence does not go nor does he lose his right in the tenanted premises. The Full Bench has also observed that the wife of the tenant was in exclusive possession of the bungalow in question and that the tenant had no right, title or interest in that bungalow in any manner. The finding of fact, therefore, recorded by the District Court in this connection was upheld by this Court in the aforesaid Full Bench decision.

The ratio decidendi of the aforesaid Full Bench decision in 2000(3) GLH 76 (supra), cannot be extended to a case even if it is found that the tenant is already residing with his wife in the newly acquired premises, which may be in the name of his wife, yet, he is still entitled to continue to retain the rented premises, even though, he is not using the same and even if he is residing in the newly purchased property. Equally, it also cannot be said that even if it is held that the property is purchased by the tenant in the name of his wife, from his own income, yet, he cannot be evicted under Section 13(1)(l) of the Rent Act, simply because such purchase is in the name of his wife. It depends upon the evidence of the case whether the purchase, as such, is by any of the family members of the tenant, or it is by the tenant himself. That fact is required to be proved and decided as per the evidence on record. So far as the provisions of Section 13(1)(l) of the Rent Act are concerned, the said provisions do not prescribe any enquiry about the title as such. In a given case, if it is proved that the tenant has acquired alternative

accommodation, it is enough to attract the said provisions, irrespective of the fact whether the title of the property vests in the tenant.

13. Mr.Joshi thereafter submitted that, at the time when the suit was filed, the so-called house in question was not purchased by the wife of the defendant, as, according to him, the house was purchased on 11.10.1983 and the suit was filed on 18th April, 1983. He submitted that the house, as such, was purchased during the pendency of the suit and, on the date when the suit was filed, there was no cause of action regarding alternative accommodation. In this connection, it is required to be noted that the sale deed between the parties was executed on 11.10.1983 and the suit, as pointed out by Mr.Joshi, was instituted earlier, i.e., on 18.4.2003. The appellate court has, however, found that even though the sale deed was executed on 11.10.1983, the possession of the property was handed over to the wife of the defendant-tenant on 22.2.1983. Even apart from that aspect, it is not in dispute that the aforesaid purchase was already made and such alternative accommodation was already available and, in fact, it was already occupied by the purchaser, i.e. the tenant / his wife. After such purchase and, in any case, at the time of passing the decree, such accommodation was already available. If that be so, the appellate court is justified in passing the decree for possession on the ground of availability of suitable alternative accommodation to the tenant, which can be said to have been available to the defendant-tenant at the time when the decree was passed.

14. Mr.Joshi, learned Advocate for the petitioner, however, submitted that if such alternative accommodation is not available on the date of filing of the suit, the suit was required to be dismissed. In this behalf, he has relied upon the decision of the Division Bench of this Court in Shivlal Nathuram Vaishnav v. Harshadrai Haribhai Oza and others (heirs of decd.) Smt. Sulochana, w/o Harshadrai Haribhai Oza, 1980 GLR 99. In the aforesaid case, the tenant, who had acquired alternative accommodation, disposed of the same before filing of the suit. The Division Bench of this Court has held that in order that a landlord may successfully claim a decree for eviction under Section 13(1)(l) of the Rent Act, it should be necessary that a tenant has acquired or been allotted a suitable residence and that the acquisition or allotment continued in existence till the date of filing of the suit. In the facts of that case, the Division Bench held that, if, at the time of filing the suit, such accommodation is not available, naturally, there is no cause of action and no decree can be passed on the

aforesaid ground. In the instant case, it is an admitted fact that at the time when the court decided the suit, such alternative accommodation was already available. Even in a given case, before passing a decree, even if there is subsequent event, that event can be taken into consideration. It is an admitted fact that such accommodation is still available. Not only that, it has been occupied also by the tenant as per the evidence on record. I am not impressed by the argument of Mr.Joshi that some of the family members as well as the present petitioner are residing in the rented premises and other family members are residing in the newly acquired premises. When it is in evidence that both the husband and wife, in the instant case, are residing together and the rented premises was not used even for a considerable period, as per Exhibit 52, which shows that no electricity consumption charges were recorded in the meter and when the evidence on record is clear that the wife of the defendant-tenant had no other income worth the name, the only inference that could be drawn is that the house in question has been purchased by the petitioner, may be, in the name of his wife, or, in any case, such accommodation is available for the purpose of occupying the same for residence. Even if in a given case, wife or even a family member of the tenant has acquired any premises and if it is proved, on evidence, that the tenant himself has shifted his residence, along with his family members, it is enough to attract the provisions of Section 13(1)(l). Ultimately, the object of the Section is that, if a tenant vacates the suit premises and is residing elsewhere, he cannot legitimately put his claim over the rented premises.

15. Considering the aforesaid aspect of the matter, as well as considering the evidence on record, it cannot be said that the appellate court has committed any error of law in reaching the conclusion that the tenant has acquired alternative accommodation. While deciding the case under Section 13(1)(l) of the Rent Act, even otherwise, the Court is not required to make rigorous investigation for finding out the title over the suit property. What is relevant is to find out whether the tenant has acquired, in any manner, alternative accommodation. In the present case, the petitioner, after having obtained the alternative accommodation, has tried to retain the possession of the rented premises, which consists of only one room, as against larger accommodation which is at his command so far as the newly purchased property is concerned.

16. Considering the aforesaid aspect of the matter, I do not find any substance in this revision application and the order of the appellate court is not required to be interfered with in this revision application. The revision is accordingly rejected. Rule is discharged. Interim relief granted earlier stands vacated. No costs.

17. At this stage, Mr.Joshi submitted that the execution of the decree for possession may be stayed for some time as the petitioner would like to approach the Supreme Court. The respondent-party-in-person, however, objected to this request on the ground that the petitioner is not using the suit premises and he has acquired even some other houses and the respondent is badly in need of the said house.

In view of the evidence in the nature of Exhibit 52, to the effect that the petitioner is not even using the property and when the suit is filed as back as in the year 1983, the above prayer made by the petitioner cannot be granted and the said prayer is accordingly rejected.

25th February, 2004 (P.B. Majmudar, J.)

****

(apj)